

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

SCOTT MICHALAK,

Plaintiff,

**ANSWER & JURY DEMAND**

vs.

COHEN & SLAMOWITZ, LLP,

CASE NO. 10-cv-624

Defendant.

---

Defendant, COHEN AND SLAMOWITZ, LLP, by and through its attorneys, Smith, Sovik, Kendrick & Sugnet, P.C., in answer to plaintiff's Complaint, state the following:

1. Paragraph "1" of plaintiff's Complaint contains plaintiff's characterizations of his claims. No response is required. To the extent a response is required, defendant **DENIES** the allegations contained in paragraph "1" of plaintiff's Complaint.
2. Paragraphs "2" and "3" of plaintiff's Complaint contain conclusions of law. No response is required. To the extent a response is required, defendant **DENIES** the allegations contained in paragraphs "2" and "3" of plaintiff's Complaint.
3. **DENIES KNOWLEDGE AND INFORMATION** sufficient to form a belief as to the allegations contained in paragraph "4" of plaintiff's Complaint.
4. **ADmits** the allegations contained in paragraphs "5" and "6" of plaintiff's Complaint.
5. Paragraph "7" of plaintiff's Complaint contains conclusions of law. No response is required. To the extent a response is required, defendant states that, to the extent plaintiff claims defendant's employees acted in a manner which violated the FDCPA or other relevant statutes or regulations, such actions, if any, were beyond the scope of such employment with

defendant. Defendant otherwise **DENIES KNOWLEDGE AND INFORMATION** regarding plaintiff's claims in paragraph "7" of plaintiff's Complaint.

6. Paragraph "8" of plaintiff's Complaint contains plaintiff's characterizations of his Complaint. No response is required.

7. **DENIES KNOWLEDGE AND INFORMATION** sufficient to form a belief as to the allegations contained in paragraphs "9", "10", "11", "12", "13" and "14" of plaintiff's Complaint.

8. **DENIES** the allegations contained in paragraphs "15" and "16" of plaintiff's Complaint.

9. Defendant repeats and realleges each and every admission, denial or denial of knowledge or information sufficient to form a belief as to those allegations repeated and realleged in paragraph "17" of plaintiffs' Complaint.

10. **DENIES** the allegations contained in paragraphs "18" and "19" of plaintiff's Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

11. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

12. Plaintiff has failed to mitigate his damages.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

13. Upon information and belief, plaintiff's cause of action may not be maintained because the statute of limitations for one or more of plaintiff's claims has expired.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

14. Defendant did not violate, in which or in part, any provision of the FDCPA.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

15. To the extent that a violation of 15 U.S.C. §1692 may later be determined to have occurred, such violation was not intentional and resulted from a bona fide error notwithstanding reasonable procedures adopted to avoid any such error.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

16. Plaintiff is precluded by the doctrine of waiver and estoppel.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

17. Any damages claimed are barred and/or circumscribed by 15 U.S.C. §1692(k).

**JURY DEMAND**

18. Demand is made for a jury trial on all issues.

**WHEREFORE**, defendant demands judgment dismissing plaintiff's Complaint, together with the costs and disbursements of this action.

DATED: November 3, 2010.

**SMITH, SOVIK, KENDRICK & SUGNET, P.C.**

By:

  
Daniel R. Ryan, Esq. (#513902)

*Attorneys for Defendant*

250 South Clinton Street, Suite 600

Syracuse, New York 13202

Telephone: (315) 474-2911

TO: Kenneth R. Hiller, Esq.  
Law Offices of Kenneth Hiller, PLLC  
6000 North Bailey Ave., Ste. 1A  
Amherst, New York 14226  
[khiller@kennethhiller.com](mailto:khiller@kennethhiller.com)